



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2018-0490; FRL-9987-81-Region 3]**

**Air Plan Approval; Maryland; Continuous Opacity Monitoring Requirements for Municipal Waste Combustors and Cement Plants**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Maryland (SIP Revision 16-04). This revision pertains to clarifying continuous opacity monitoring requirements and visible emission standards for municipal waste combustors (MWCs) and Portland cement plants. This action is being taken under the Clean Air Act (CAA).

**DATES:** This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2018-0490. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are

available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Maria A. Pino, (215) 814-2181, or by e-mail at [pino.maria@epa.gov](mailto:pino.maria@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On August 23, 2018 (83 FR 42624), EPA published a notice of proposed rulemaking (NPRM) for the State of Maryland. In the NPRM, EPA proposed approval of a revision to Maryland’s SIP to clarify visible emissions (VE) and continuous opacity monitor (COM) requirements for MWCs and Portland cement plants. The formal SIP revision (SIP Revision 16-04) was submitted by Maryland on May 10, 2016. On February 28, 2018, the Maryland Department of the Environment (MDE) Secretary Ben Grumbles submitted a clarification letter to EPA Regional Administrator Cosmo Servidio, withdrawing definitions for continuous burning and operating time, COMAR 26.11.01.01B(8-1) and (27-1), respectively, from SIP Revision 16-04. These definitions are no longer part of SIP Revision 16-04 and are not pending before EPA.

### **II. Summary of SIP Revision and EPA Analysis**

The SIP revision consisted of revisions to COMAR 26.11.01.10, Continuous Opacity Monitoring Requirements. Under COMAR 26.11.01.10A, Applicability and Exceptions, MDE added a new section, COMAR 26.11.01.10A(6), regarding requirements for alternative visible emissions limits. Under COMAR 26.11.01.10B, General Requirements for COMs, MDE amended COMAR 26.11.01.10B(3) to clarify that a COM must comply with the applicable requirements

in 40 CFR part 51, appendix P in its entirety. Also under COMAR 26.11.01.10B, MDE added new sections COMAR 26.11.01.10B(5) and 26.11.01.10B(6) to clarify COM requirements for the owners and operators of cement kilns and clinker coolers that are operating COMs and the owners and operators of MWCs that are required to install and operate COMs, respectively. MDE repealed 26.11.01.10F, regarding redundant COMs requirements for fuel burning equipment, and is requesting its removal from the SIP. Finally, MDE amended COMAR 26.11.08, Control of Incinerators, to add a new section D to regulation .04, Visible Emissions.

EPA evaluated these amendments and found that they help to clarify requirements for COMs. Therefore, they are approvable. Other specific requirements of Maryland's SIP Revision 16-04 and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here.

### **III. Summary of Public Comments and EPA Responses**

On September 1, 2018, EPA received adverse comments from one anonymous commenter.

*Comment:* The commenter observed that in the docket for this rulemaking, Docket ID No. EPA-R03-OAR-2018-0490, at <http://www.regulations.gov>, Maryland's February 28, 2018 withdrawal letter looked incomplete.

*EPA Response:* Upon receipt of the comment, EPA checked and confirmed that the second page of the letter was inadvertently excluded from the docket. EPA notes that the substance of the letter was contained in the first page of the letter, which was included in the docket. The first page explained that Maryland was withdrawing the definitions of continuous burning and operating time from EPA's consideration as SIP revisions.

“The purpose of this letter is to request a clarification to the Maryland SIP Rev #16-04, to withdraw two definitions under COMAR 26.11.01.01 Definitions from EPA's consideration. Please remove the following two definitions from EPA's consideration for inclusion into Maryland's SIP as part of SIP Rev #16-04:

COMAR 26.11.01.01.8:

1. (8-1) Continuous Burning
2. (27-1) Operating Time”

The omitted second page contained only the following closing language:

“... SIP submittal (enclosed) is an exact duplicate of the official hard copy. If you have any questions concerning this SIP action, please feel free to call me at (410) 537-3084 or Mr. George (Tad) S. Aburn, Jr., Director of the Air and Radiation Administration, at 410-537-3255.

Sincerely,  
Ben Grumbles  
Secretary  
Enclosure

cc: Mr. George (Tad) S. Aburn Jr., Director, Air and Radiation Administration  
Ms. Cristina Fernandez, Director, Air Protection Division, EPA Region III”

Although all the relevant substantive information was contained in the first page of the letter, which was included in the docket, EPA rectified the omission as quickly as possible. EPA posted Maryland's complete two-page letter, dated February 28, 2018, to Docket ID No. EPA-R03-OAR-2018-0490, at <http://www.regulations.gov>, on September 4, 2018. The public comment period ran from August 23, 2018 until September 24, 2018.

*Comment:* The commenter also stated that EPA's NPRM was hard to understand, writing, “I can't follow which COMAR applies to what COMAR because of what redundancies, changes, or what have you.”

*EPA Response:* There were numerous changes discussed in EPA's August 23, 2018 NPRM, which readers may find hard to follow. However, in section II of the NPRM, Summary of SIP Revision and EPA Analysis, EPA set out a section by section accounting of the proposed

changes to Maryland's SIP. In addition, in Docket ID No. EPA-R03-OAR-2018-0490, at <http://www.regulations.gov>, there are numerous documents that are part of Maryland's SIP Revision submittal, which help to clarify the exact COMAR changes. These documents include the following attachments to document number EPA-R03-OAR-2018-0490-0002, which is Maryland's SIP revision submittal letter.

<b>Document number/title</b>	<b>Explanation</b>
3a original COMAR eff VE Incinerator SIP 16-04	Current Effective COMAR text per MDE as of last action final effective 2/15/16; COMAR 26.11.08 - Control of Incinerators - .04 ONLY
3a updated COMAR eff text with notes SIP 16-04 Rev_02092018	Current Effective COMAR text, as approved after SIP 15- 05 including SIP 15- 04 with MDE notes; MDE proposed clarification to SIP 16- 04 on 02/09/2018.
3b updated COMAR eff text SIP 16-04 Rev_02092018clean	Current Effective COMAR text, as approved after SIP 15- 05 including SIP 15- 04 with MDE proposed SIP Rev #16- 04 clarification on 02/09/2018
3b-original COMAR eff text 26.11.01_.10 SIP16-04_042816	Current Effective COMAR text per MDE as of last action final effective 2/15/16; COMAR 26.11.01.01 & .10
4a- original Notice of Final Action_02052016.docx	Maryland Register, volume 43, issue 3, Friday, February 5, 2016, notice of final action
4b -Updated Notice of Final Action, definitions withdrawn	Maryland register, volume 43, issue 3, Friday, February 5, 2016, notice of final action, with references to withdrawn definitions for continuous burning and operating time, COMAR 26.11.01.01B(8-1) and (27-1), removed.
5a- original Notice of Proposed Action_11.13.15	Maryland Register, volume 42, issue 23, Friday, November 13, 2015, notice of proposed action
5b-Updated Notice of Proposed Action, Definitions withdrawn	Maryland register, volume 42, issue 23, Friday, November 13, 2015, notice of proposed action with withdrawn definitions for continuous burning and operating time, COMAR 26.11.01.01B(8-1) and (27-1), removed.

These regulatory changes are also described in the amendments to 40 CFR part 52 set forth in this final rulemaking action.

#### **IV. Final Action**

EPA is approving Maryland's May 10, 2016 SIP Revision 16-04, except for the definitions of continuous burning and operating time that MDE withdrew from SIP Revision 16-04 on February 28, 2018, as a revision to the Maryland SIP. These revisions consist of amendments to Regulation .10 under COMAR 26.11.01, General and Administrative Provisions, and Regulation .04 under COMAR 26.11.08, Control of Incinerators, in Maryland's SIP Revision 16-04, related to COMs and VE requirements for cement plants and MWCs.

## **V. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of MDE's amendments to Regulation .10 under COMAR 26.11.01, General and Administrative Provisions, and Regulation .04 under COMAR 26.11.08, Control of Incinerators, contained in SIP Revision 16-04. As described previously, the amendments to COMAR 26.11.01.10, Continuous Opacity Monitoring Requirements, are as follows: (1) Add a new section 6 to COMAR 26.11.01.10A, Applicability and Exceptions; (2) amend section 3 under COMAR 26.11.01.10B, General Requirements for COMs; (3) add new sections 5 and 6 under COMAR 26.11.01.10B; and (4) remove COMAR 26.11.01.10F, which has been repealed by the State. The amendment to COMAR 26.11.08, Control of Incinerators, consists of an addition of a new section D to Regulation .04, Visible Emissions. These regulatory changes are described in the amendments to 40 CFR part 52 set forth in this final rulemaking action. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region III Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been

approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

## **VI. Statutory and Executive Order Reviews**

### *A. General Requirements*

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

---

<sup>1</sup> 62 FR 27968 (May 22, 1997).

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the



agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Maryland SIP Revision 16-04, COMs requirements for MWCs and Cement Plants, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 30, 2018.

Cosmo Servidio,  
Regional Administrator,  
Region III.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart V--Maryland**

2. In §52.1070, the table in paragraph (c) is amended by revising the entries “26.11.01.10” and “10.18.08/26.11.08.04” to read as follows:

**§52.1070 Identification of plan.**

\* \* \* \*

(c) \* \* \*

**EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN  
THE MARYLAND SIP**

<b>Code of Maryland Administrative Regulations (COMAR) citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Additional explanation/ citation at 40 CFR 52.1100</b>
<b>26.11.01 General Administrative Provisions</b>				
* * *	* * *	* * *	* * *	
26.11.01.10	Continuous Opacity Monitoring Requirements	2/15/2016	<b>[insert date of publication in the Federal Register], [insert Federal Register citation]</b>	1. Add new subsections A(6), B(5) and B(6). 2. Revise subsection B(3). 3. Remove subsection F.  Previous approval 3/28/2018 (83 FR 13193)
* * *	* * *	* * *	* * *	
<b>10.18.08/26.11.08 Control of Incinerators</b>				
* * *	* * *	* * *	* * *	
10.18.08/26.11.08.04	Visible Emissions	2/15/2016	<b>[insert date of publication in</b>	Add new subsection D. Previous

<b>Code of Maryland Administrative Regulations (COMAR) citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Additional explanation/ citation at 40 CFR 52.1100</b>
			<b>the Federal Register], [insert Federal Register citation]</b>	approval 8/1/2007 (72 FR 41891).
* * *	*	*	* *	

\* \* \* \* \*

[FR Doc. 2018-27049 Filed: 12/13/2018 8:45 am; Publication Date: 12/14/2018]